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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/866,279 05/30/97 DYMECKI

S 234805

EXAMINER

HM12/0421

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BAKER, A

ART UNIT

PAPER NUMBER

1632

DATE MAILED:

04/21/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Advisory Action**

Application No.

08/866,279

Applicant(s)

Dymecki

Examiner

Anne-Marie Baker, Ph.D.

Group Art Unit

1632



## THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) ☐ expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☐ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☒ Appellant's Brief is due two months from the date of the Notice of Appeal filed on Mar 14, 2000 (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Mar 14, 2000 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

- ☒ The proposed amendment(s):

☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☐ will not be entered because:

- ☐ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

- ☒ Applicant's response has overcome the following rejection(s):

The amendments to the claims overcome the rejection of Claims 15, 41, 42, and 47 under 35 U.S.C. 112, second paragraph.

- ☐ Newly proposed or amended claims \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.
- ☐ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: \_\_\_\_\_

Claims objected to: \_\_\_\_\_

Claims rejected: 1-49

- ☐ The proposed drawing correction filed on \_\_\_\_\_ ☐ has ☐ has not been approved by the Examiner.
- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Other \_\_\_\_\_

Art Unit: 1632

**Advisory Action**

(cont.)

The declaration is not convincing because it leaves unclear whether the method employed in the specification and declaration would be expected to produce a functional recombination wherein the recombined gene is intact and functional. The experiments described in the instant specification are parallel to those described in the declaration of Dr. Hammer, but no recombination was detected in the experiments carried out by Dr. Hammer. Thus, the information provided in the declaration raises the question of whether the transgenic mice described in the instant specification can be expected to produce a functional gene upon recombination. Functional recombination is essential to the operability of the invention.

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